by general agents as to past transactions are admissible. *McGenness v. Adriatic Mills*, 116 Mass. 177; *Ins. Co. v. Woodruff*, 26 N. J. L. 541. *Contra*, *Smith v. N. C. R. Co.*, 68 N. Car. 107; *Randall v. Northwestern Tel. Co.*, 54 Wis. 140.

EVIDENCE—DOCUMENTS—SUPPRESSION—INFERENCE.—STOUT v. SANDS, 49 S. E. 428 (W. VA.).—*Held*, that when a *prima facie* case is made, and doubt is cast upon it by rebuttal evidence, suppression of a document relied upon as evidence by the opposite party raises a strong inference against the party failing to produce it, and determines the point in favor of the other party.

No inference would arise when the document would not be admissible without the opponent's consent. *Merwin v. Ward*, 15 Conn. 377; *Carter v. Troy Lumber Co.*, 138 Ill. 533. The inference is allowable only after notice to produce the document has been given before trial, *Emerson v. Fisk*, 6 Greenl. 290; *Tobin v. Shaw*, 45 Me. 331; and some secondary evidence of the contents of the document has been given. *Cross v. Bell*, 34 N. H. 82: *Jackson v. Johns*, 18 Johns. 331. *Contra*, *Runkle v. Burnham*, 153 U. S. 216; *Crescent Co. v. Ermann*, 36 La. 841.

EVIDENCE—PERSONAL INJURIES—SIZE OF FAMILY.—ST. LOUIS, I. M. & S. RY. CO. v. ADAMS, 85 S. W. 768. (ARK.).—In an action for personal injuries plaintiff was permitted to testify as to the size of his family and as to the assistance he received from them in his work. *Held*, that the admission of this evidence constituted reversible error.

The fact that the injured party has a family dependent upon him is not ordinarily admissible to enhance damages. *Pittsburg, Ft. W. & C. Ry. Co. v. Powers*, 74 Ill. 341; *Louisville & N. Ry. Co. v. Binion*, 107 Ala. 645. Nor is it competent for plaintiff to prove his pecuniary or social condition in general. *Kansas Pac. Ry. Co. v. Pointer*, 9 Kan. 620; *Pa. Ry. Co. v. Books*, 57 Pa. St. 339. In *Moore v. City of Huntington*, 31 W. Va. 842, it is held that the verdict will not be set aside if there is other evidence sufficient to sustain it. If the jury is properly charged as to the measure of damages, the admission of such testimony is not necessarily a cause for reversal. *City of Kinsley v. Morse*, 40 Kan. 577; *Central Pass. Ry. Co. v. Kuhn*, 86 Ky. 578. But the instruction as to the measure of damages must be specific. *Stephens v. H. & St. J. Ry. Co.*, 96 Mo. 207. It is stated in *Youngblood v. S. C., etc., Ry. Co.*, 60 S. C. 9., that when incapacity to support family is a proximate result of the injury, such evidence is admissible. And a similiar conclusion is reached in *San Antonio & A. P. Ry. Co. v. Robinson*, 73 Tex. 277.

INJUNCTIONS—INTERLOCUTORY—REVIEW ON APPEAL.—NORTHERN SECURITIES CO. v. HARRIMAN ET AL., 134 FED. 331.—When the judge of a lower court, in granting a preliminary injunction, was materially influenced by the consideration that the questions involved were, as he viewed them, serious and doubtful, and that an order denying the injunction would not be reversible upon appeal. *Held*, that the rule that the appellate court will not interfere with the exercise of the discretionary power of the court, unless it is abused, does not apply, and the question will be determined on the merits. Gray, J., *dissenting*.

This case hardly seems consistent with former decisions. The granting of a temporary injunction rests within the discretion of the court, *Buffington v. Harvey*, 95 U. S. 99.; and this discretion will not be interfered with by a higher court, *Powell v. Howard*, 81 Ga. 359; unless it clearly appears upon

the record that it has been flagrantly abused. *Parker v. Green*, 49 Ga. 624; *Roger v. Tennant*, 45 Cal. 185. It is not an abuse of this discretion to grant an injunction where there is a doubtful case, and the defendant might do acts which would render a final judgment in favor of the plaintiff ineffectual. *Gloversville v. Johnstown Ry. Co.*, 66 Hun 627. It is an abuse to grant an interlocutory injunction where the complaint fails to state a cause of action and is reviewable, *McHenry v. Jewett*, 90 N. Y. 58; unless a doubtful question of law arises from the complaint, when the higher court should defer its decision until a hearing upon the merits by the lower court. *Selchow v. Baker*, 93 N. Y. 59.

NEGLIGENCE—HIGHWAYS—DANGEROUS CONDITION.—SHEPARD V. BELLOW & MERRITT CO., 91 N. Y. SUPP. 999.—*Held*, that where contractors reconstructing a road had given notice to the public of the dangerous condition of the road and plaintiff had actual notice of its condition by recent use, the contractors are not liable for injury to plaintiff resulting from the use of the road while in such condition. Chase and Houghton, JJ., *dissenting*.

A traveler upon the highway must use ordinary care to avoid injury. *Creamer v. R. Co.*, 156 Mass. 320; *Chicago v. Bixby*, 84 Ill. 82. Contributory negligence is not conclusively established by the fact that the injured party had previous knowledge of the highway defect. *Evans v. Utica*, 69 N. Y. 166; *Mahoney v. Metropolitan R. Co.*, 104 Mass. 73. Nor by the fact that injured party might have taken a better and safer part of the highway. *Aurora v. Hillman*, 90 Ill. 61; *Griffin v. Auburn*, 58 N. H. 121. *Contra*, *Wilson v. Charlestown*, 8 Allen 137. Nor by the fact that plaintiff could have seen the defect, if he had looked. *Merriam v. Phillipsburg*, 158 Pa. 78. Only those using the highway in the ordinary mode for travel can recover damages. *Taylor v. Peckham*, 8 R. I. 349; *McArthur v. Saginaw*, 58 Mich. 357.

NUISANCE—PERCOLATION OF WATER.—SCHWARZENBACH V. ELECTRIC WATER POWER CO., 92 N. Y. SUPP. 187.—*Held*, that where defendant had a license from plaintiff to erect a dam and flood his land below the dam, defendant is liable for overflow and percolation of water through the dam flooding other land of plaintiff. Parker and Smith, JJ., *dissenting*.

A person erecting a dam is responsible for all injury caused by it at ordinary stages of water, *Angell, Water Courses, (7th Ed.)*, *sec.* 330; such as drowning neighboring lands by percolation. *Marsh v. Trullinger*, 6 Ore. 356; *Wilson v. New Bedford*, 108 Mass. 261. Also owners of a reservoir which is not sufficiently protected against percolation are liable for injury caused thereby. *Monson v. Fuller*, 5 Pick. 554; *Snow v. Whitehead*, L. R. 27 Ch. D. 588. The American decisions plant the liability on the ground of negligence in construction or in maintenance of dam or reservoir, *Pixley v. Clark*, 35 N. Y. 520; *Mills v. County Commiss'rs*, 108 Mass. 363; whereas the English courts hold that the owners are liable, though not negligent in constructing or maintaining such reservoir. *Rylands v. Fletcher*, L. R. 1 Exch. 265; *Smith v. Fletcher*, L. R. 7. Exch. 305.

RAILROADS—TREESPASSERS—WANTON NEGLIGENCE.—REYBURN V. MO. PAC. RY. CO., 86 S. W. 174 (MO.).—*Held*, that a railroad is liable for the death of a trespasser walking on the track, when the trainmen must inevitably have seen him, but did nothing to warn him of his danger.

The weight of authority seems to be that a trespasser cannot recover in the